

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3224 of 1997

AND

FIRST APPEAL NO 2444 OF 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA  
and  
Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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ORIENTAL INSURANCE CO LTD

Versus

SUSHILABEN MANUBHAI VALAND  
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Appearance:

MR KK NAIR for Petitioners  
MR BS PATEL for Respondent No. 1  
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CORAM : MR.JUSTICE D.C.SRIVASTAVA  
and  
MR.JUSTICE H.K.RATHOD

Date of decision: 08/08/2000

COMMON ORAL JUDGEMENT

[ PER : D.C.SRIVASTAVA, J. ]

#. These two appeals arising out of same accident involving similar questions of law and facts are proposed to be disposed of by common judgment.

#. The Motor Accident Claim Tribunal, Nadiad in its interim award dated 3rd May, 1997 awarded compensation of Rs.5,38,068/- together with interest at the rate of 12 % per annum from the date of application till the date of payment with proportionate cost. This award was rendered under Section 163 A of the Motor Vehicles Act. It is this award which is under challenge in these two appeals.

#. We have heard Shri R. H. Mehta and Shri K. K. Nair, learned counsel for the appellants. We also heard the above advocates representing the appellant on the last date of hearing and we were going to dictate the judgment, when Shri B. S. Patel appeared and requested that he wants to show some judgements of the Apex Court to the contrary. Today we have waited for Shri B. S. Patel right from 11.00 A.M. to till 4.10 P.M. and in the mean time, twice or thrice request was made for keeping back these two appeals. We have given sufficient accommodation today in this part-heard matters. Till now even upto 4.10 P.M., Shri B. S. Patel has not appeared nor there is any information conveyed to this Court as to whether he is busy in some other court or he has gone. In these circumstances, we are left with no option but to hear the arguments of Shri R. H. Mehta and Shri K. K. Nair for the appellants.

#. The contention of the learned counsel for the appellants has been that the award is in excess of the amount indicated in second schedule, hence it cannot be sustained. In First Appeal No. 3224 of 1997, monthly income of the deceased was assessed by the Tribunal at Rs.5836/- and similar amount was assessed in other Appeal namely First Appeal No.2444 of 1997. The learned counsel for the appellants in both the appeals have drawn our attention to Second Schedule for the purpose of Section 163-A of the Motor Vehicles Act and contended that while awarding the interim compensation under the Schedule, the tribunal could not have considered annual income of the deceased beyond Rs.40,000/- per annum which is the outer limit. Consequently, it was contended that the criteria adopted by the tribunal in proceeding to assess the

compensation at the monthly income of Rs.5836/- is erroneous and is also contrary to the second schedule of the Act. We have already accepted this contention of Shri R.H. Mehta and Shri K. K. Nair while deciding First Appeal No. 2445/97 and First Appeal No. 3223 of 1997 on 20th June, 2000. That was also a case where the two appeals arose out of the same accident and therefore, there is no reasons for us to take different view than that we have already taken. Since no assistance has been rendered on behalf of Shri B.S. Patel by pointing out some authority of the Apex Court to the contrary, we are still affirming the view taken by us in our aforesaid common judgment delivered on 20th June, 2000. We cannot subscribe to the view that a person claiming annual income more than Rs.40,000/- is not entitled to claim interim compensation at the actual annual income. We had also considered the Division Bench announcement of this Court in RAMDEVISINGH V. CHUDASMA VS. HANSRAJBHAI V. KHDALA reported in 1999 (1) G.L.R. 631 and we were unable to agree that the second schedule is violative of Article 14 of the Constitution of India. Needless to say that the vires of the Act or of a schedule thereunder, cannot be challenged before this Division Bench; rather under the schedule of sitting in the High Court, vires of the Act is to be challenged before the Division Bench specially constituted for the purpose. Prima facie, we found that vires of the second schedule of Section 163-A of the Motor Vehicles Act has not been tested by the Apex Court nor it has been held so far to be ultra vires. Consequently, we are bound to follow the guidelines given in the second schedule for the purposes of Section 163-A of the Motor Vehicles Act.

#. In the instant appeals, we are not concerned with the victims having low or higher annual income. What is contemplated under Section 163-A is that "Notwithstanding anything contained in this Act or in any other law for the time in force or the instrument having force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation as indicated in the Second Schedule to the legal heirs or the victims as the case may be.

#. It is clear from plain reading of the above provision that the Tribunal is bound to award interim compensation under Section 163-A only for the amount and to the extent as indicated in the Second Schedule. We are unable to accept the view that the tribunal has simply to take guidance from the Second Schedule and can travel beyond

what is contained in the Second Schedule in suitable cases. That would actually amount to reenacting and re-legislating Section 163-A of the Act which is not function and jurisdiction of the Court. The Courts are required to interpret the provisions of the statute in conformity with the intention of the legislature. We do not find any ambiguity in Section 163-A of the Act which requires interpretation. In our view, even a person who is claiming annual income beyond Rs.40,000/-, can move an application under Section 163-A of the Act but the tribunal while awarding the compensation under this Section cannot travel beyond the annual income of the victim or deceased at Rs.40,000/-. If any amount in excess of this annual income is to be claimed by the heirs of the deceased or by the victim, he or they can do so is an application under Section 166 of the Motor Vehicles Act. The intention of legislature in providing compensation under the structural formula has been to provide some adequate compensation to the victim or to the heirs of the deceased as interim measure. Adequate compensation under Section 163-A of the Act is not to be equated with actual compensation to be awarded in the main claim petition under Section 166 of the Motor Vehicles Act. While deciding the main petition under Section 166 of the Motor Vehicles Act of the Act, the jurisdiction of the Tribunal is widened and it can take into consideration actual income of the deceased and can proceed to determine the actual compensation payable to the victim or to the heirs of the deceased. We are therefore, of the view that prima facie, the structural formula is not violative of Article 14 of the Constitution of India.

#. It would not be out of place to mention that under Section 140 of the Motor Vehicles Act, fixed amount of compensation is to be awarded in case of no fault liability. There the persons having more income cannot complain that an amount of Rs.25,000/- in case of injuries and Rs.50,000/- in case of death is inadequate or violative of Article 14 of the Constitution of India. The structural formula of course is not strictly on the basis of no fault liability. Of course, some fault is there in such cases, but for the purpose of Section 163-A of the Act, the claimant is not required to allege or prove negligence or rashness on the part of the vehicle driver but that does not mean that any sum can be awarded on application under Section 163-A of the Act. It is only reasonable, adequate compensation which was in the mind of the legislature and keeping in view this intention, outer limit was fixed by the legislature. The

legislature never intended to prohibit a person from claiming greater compensation in a petition under Section 166 of the Motor Vehicles Act.

#. For the reasons stated above, we are of the view that though the person applying and / or claiming under Section 163-A of the Act can claim more compensation but the tribunal cannot award compensation beyond what is contemplated and prescribed in the Second Schedule.

#. The next exercise to be undertaken is as to what should be the amount of compensation in the instant cases. We cannot accept the annual income of the deceased at the rate of Rs.5836/- per month. On the other hand, maximum annual income under this schedule should be Rs.4,00,000/- per annum because the deceased was aged 54 years on the date of the accident. One third of this amount has to be deducted on account of personal expenditure of the deceased which comes roughly to Rs.1,33,000/-. The total compensation will therefore be Rs.2,67,000/-. Over and above, other compensation awarded by the tribunal amounting to Rs.24,500/- has to be accepted and in this view of the matter, total compensation payable to the respondents under Section 163-A cannot exceed Rs.2,91,500/-. As such, compensation awarded by the tribunal at Rs.5,38,068/- has to be reduced to Rs.2,91,500/-.

##. The two appeals therefore succeed in part and are hereby, partly allowed. The amount of Rs.5,38,068/- in the impugned award shall be read and substituted by Rs.2,91,500/-. The rate of interest awarded by the tribunal shall remain the same. The cost shall be calculated proportionately in accordance with modified interim award. With this direction, the two appeals are partly allowed with no order as to costs.

##. Before parting with this judgment, we direct the appellants to deposit a sum of Rs.2,91,500/- in the Tribunal within a period of 6 weeks from today. Out of the deposit so made, 30 % shall be paid to the claimants through Account Payee cheque and 70 % shall be invested in Fixed Deposit with some Nationalised bank for a period of 3 years initially. The amount of interest accruing during this period shall be paid to the claimants. The claimants shall file written undertaking before the tribunal that they shall proceed with the petition under Section 166 of the Motor Vehicles Act and shall get it decided on merits and shall not get it dismissed in default nor shall withdraw the same.

Dt : 8-8-2000 [ D.C.Srivastava, J.] [ H.K.Rathod, J.]

#kailash#